

New Jersey Board
of Chiropractic
Examiners Filed, Date 7/8/91

John J. Miller, Executive Director

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC
SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF CHIROPRACTIC
EXAMINERS
DOCKET NO.

In the Matter of the Suspension)
or Revocation of the License of)

LAWRENCE CASTNER, D.C.)

To Practice Chiropractic in)
the State of New Jersey)

Administrative Action

FINAL DECISION AND ORDER

This matter was opened to the New Jersey State Board of Chiropractic Examiners on April 25, 1991 by the Administrative Complaint of Robert J. Del Tufo, Attorney General of New Jersey, by Linda S. Ershow-Levenberg, Deputy Attorney General, seeking the suspension or revocation of the license of Lawrence Castner, D.C. (hereinafter, sometimes "respondent"), to practice chiropractic in the State of New Jersey. The Complaint, in four counts, alleged that respondent had engaged in professional misconduct in violation of N.J.S.A. 45:1-21(e) (four counts), engaged in the use of dishonesty, misrepresentation and false promise in violation of N.J.S.A. 45:1-21(b) (two counts), engaged in repeated acts of negligence and malpractice in violation of N.J.S.A. 45:1-21(d) (two counts), and engaged in conduct demonstrating a lack of good moral character, a continuing requirement for licensure, and grounds for revocation or suspension of a license to practice chiropractic pursuant to N.J.S.A. 45:1-21(h). Respondent filed a letter answer to the Complaint stating that he did not plan to contest the allegations

of the Complaint.

A hearing in this matter was held on June 20, 1991 in order to provide the respondent with an opportunity to present any mitigating factors he wished to have taken into consideration prior to the imposition of penalty by the Board. Respondent appeared pro se. Deputy Attorney General Linda S. Ershow-Levenberg appeared on behalf of the complainant. Respondent was advised of his right to be represented by counsel and indicated that he wished to proceed pro se. Respondent acknowledged that he had received the Complaint and Notice of Hearing. Respondent admitted the allegations in each of the four counts of the Complaint. Respondent then spoke briefly in mitigation of penalty. The Board conducted its deliberations in Executive Session on June 20, 1991, and thereafter rendered its decision in Public Session on that same date.

On consideration of the record herein, the Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Lawrence Castner, D.C. is a licensed chiropractor in the State of New Jersey and has been a licensee during all times pertinent hereto.

2. In or about the summer of 1989, respondent employed J.H., a fifteen year old girl, as an office assistant for three months. At that time respondent advised J.H. that she should become a chiropractic patient in his office although he did not identify any condition requiring chiropractic care.

3. During the course of the initial chiropractic

examination of fifteen year old J.H., respondent told her to remove all of her clothing and then left the room. J.H. removed everything except her bra and underpants. When the respondent re-entered the room, he told her to remove the rest of her clothing and remained in the room while she removed her bra and underpants in his presence.

4. The respondent told J.H. to face a wall so that he could take Moire photographs. "Moire" photographs are taken in a darkened room while utilizing a projector to cast a graph or grid on the patient's back. Generally, one or two photographs are taken of the patient's back. In the case of J.H., the respondent took approximately seven photographs, including experimental pictures which required J.H. to turn to her side at the waist, bend her head to the right or to the left, and sit on a chair or stool.

5. Also during the course of this initial chiropractic examination of J.H., respondent performed a chiropractic examination of her spine while she was completely naked and face down on the adjusting table. He did not offer her a gown until he asked her to roll over onto her back.

6. The respondent performed chiropractic adjustments on J.H. on two other occasions without specifying to her the reason for doing so and without having received a request for adjustments from J.H.

7. On October 4, 1990, respondent appeared before a committee of the Board of Chiropractic Examiners for an investigative inquiry and stated in sworn testimony that all of

his employees were, until the summer of 1990, paid "off the books" and that he declared none of them in filing his business taxes. Accordingly, respondent has failed to maintain true and accurate employment records pursuant to N.J.S.A. 43:21-11(g); has failed to pay funds to the Unemployment Compensation Fund pursuant to N.J.S.A. 43:21-7 et seq.; has failed to collect funds and file required Unemployment Contribution Reports pursuant to N.J.S.A. 43:21-14(a)(1); has failed to pay New Jersey State Withholding Taxes pursuant to N.J.S.A. 54A:7-4; has failed to pay Federal Employment Tax for Old Age, Survivors and Disability Insurance pursuant to 26 U.S.C. §3101(a) and Tax for Hospital Insurance pursuant to 26 U.S.C. §3101(b); has failed to pay Federal Employment Tax pursuant to 26 U.S.C. §3301 et seq.; and has failed to collect and pay Federal Withholding pursuant to 26 U.S.C. §3401 et seq.

8. On or about March 23, 1990, the Attorney General served the respondent with a subpoena for the chiropractic record of patient J.H. Respondent advised the investigator who served the subpoena that he did not possess a file for J.H. in view of the fact that she was an employee, and he did not keep patient records for employees.

9. On October 4, 1990, during the aforementioned appearance before the Board for an investigative inquiry, the respondent provided to the Board a patient record for J.H. The respondent testified that the record was created approximately at the same time that J.H. was employed in his office. Upon further questioning, respondent admitted that the tendered record was not

a truthful, accurate and contemporaneous record of the patient's condition and treatment. It was a falsified document which was created by the respondent approximately one week prior to his appearance before the Board. Accordingly, respondent provided false testimony to the Board under oath and attempted to provide a patient record which was, in fact, created merely for the purpose of appearing before the Board.

10. In or about the period February 12, 1988 to July 27, 1988, respondent provided chiropractic treatment to patient S.K. During this period of time she received chiropractic adjustments for "multiple vertebral subluxations" as set forth in the billing records for S.K. The patient record for S.K. contained an initial examination sheet, eleven pages of billing records, one photograph of the patient's naked torso from the back, and no further description of condition, diagnosis, or treatment.

11. Respondent does not create treatment records for any of his patients which would reflect health histories or the ongoing progress notes and findings of his examination and adjustments of the patients.

CONCLUSIONS OF LAW

1. Respondent's performance of the chiropractic examination of J.H. and the taking of multiple photographs while J.H. was totally unclothed constitutes professional misconduct as determined by the Board pursuant to N.J.S.A. 45:1-21(e) and gross negligence in violation of N.J.S.A. 45:1-21(c). Further, respondent's repeated performance of chiropractic adjustments on J.H. without specifying a condition requiring chiropractic care

and without having received a request for adjustments from the patient constitutes repeated acts of negligence in violation of N.J.S.A. 45:1-21(d).

2. Respondent's custom of paying his employees "off the books" and his failure to maintain all employment records as required by State and Federal law constitute the use or employment of dishonesty, fraud, deception or misrepresentation in violation of N.J.S.A. 45:1-21(b) and professional misconduct as determined by the Board pursuant to N.J.S.A. 45:1-21(e). Further, respondent's willful and intentional violation of State and Federal law in regard to employment records demonstrates a lack of good moral character, a requisite for licensure in this State pursuant to N.J.S.A. 45:9-41.5, and constitutes a violation or failure to comply with the provisions of the Chiropractic Practice Act pursuant to N.J.S.A. 45:1-21(h).

3. Respondent's creation of a false patient record for patient J.H. and the provision of false testimony under oath to a Board committee constitutes the use or employment of dishonesty, fraud, deception or misrepresentation as well as professional misconduct in violation of N.J.S.A. 45:1-21(b) and (e).

4. Respondent's failure to maintain and create patient records which meet the generally accepted standards of the profession constitute repeated acts of negligence and a continuing pattern of professional misconduct pursuant to N.J.S.A. 45:1-21(d) and (e).

DISCUSSION

Dr. Castner spoke to the Board very briefly in mitigation of

penalty. He reiterated that he admitted the allegations of the Complaint. He advised the Board that he had been in chiropractic practice for approximately ten years and that there had been no prior complaints against him. He simply advised the Board that he thinks that he is a good chiropractor.

The Board thoroughly considered the record before it. The Board finds particularly disturbing the fact that Dr. Castner exposed a young teenage girl to unnecessary humiliation and used her for a subject of so-called experimental photographs. The Board also is struck by the fact that there appeared to be no recognition by the respondent that his conduct may have caused emotional harm to J.H. and her family.

Another aspect of this proceeding which the Board finds of particular moment is the fact that the respondent quite cavalierly created a patient record for the purpose of appearing before a Board committee for an investigative inquiry and, apparently he had no difficulty lying under oath when he advised the committee members that the record had been created at the time he treated patient J.H. Such conduct is egregious and further demonstrates a lack of good moral character as required for continuing licensure in this State.

The Board is further troubled by the fact that respondent has failed through the course of his professional career to maintain patient records which achieve even the minimum requirements of adequacy. To the extent that any of the respondent's patients' records may be required to be reviewed by consultants, subsequent treating chiropractors or other

physicians, their records will be incomplete and provide no history of chiropractic treatment outside of billing records.

The authority to practice chiropractic in the State of New Jersey is a privilege not to be taken lightly. The respondent presented no mitigating evidence to persuade the Board that he recognized the reprehensibility of his conduct. Neither did he express any remorse or compunction about his prior conduct. The Board's duty to the public to assure the health, safety and welfare of individuals who seek chiropractic services require the entry of the within Order.

IT IS, THEREFORE, on this 5th day of July, 1991,

ORDERED THAT:

1. The license of Lawrence Castner, D.C. to practice chiropractic in the State of New Jersey shall be and is hereby revoked effective July 20, 1991.


2. Dr. Castner may petition the Board for the reinstatement of his license no sooner than August 20, 1992. A personal appearance before the Board of Chiropractic Examiners shall be required at which time the burden will be on Dr. Castner to demonstrate that he is morally and professionally fit to practice chiropractic without posing a threat of harm to patients or the public. Prior to making a petition for reinstatement to the Board, Dr. Castner must submit to a psychological evaluation from a Board appointed consultant. Dr. Castner shall be responsible for the costs of the consultant's evaluation and report.

3. During the period of time in which respondent's chiropractic license remains revoked, respondent shall not own or

otherwise maintain a pecuniary or beneficial interest in a chiropractic practice, or function as a manager, proprietor, operator or conductor of a place where chiropractic treatment is performed. The terms of the annexed document entitled "Future Activities of Chiropractic Board Licensee Who Has Been Disciplined" are incorporated herein and made applicable to Dr. Castner during the period of revocation of licensure.

4. Dr Castner shall surrender his engrossed certificate and current registration to the Board of Chiropractic Examiners or its designee immediately upon service of this Order.

5. Dr. Castner shall pay to the Board of Chiropractic Examiners the costs to the State in the amount of \$1,250.00 as established by affidavit from the Enforcement Bureau. Payment shall be made by money order or certified check made payable to the State of New Jersey and shall be due no later than August 1, 1991. Payment shall be submitted to the Board of Chiropractic Examiners at 1207 Raymond Boulevard, Newark, New Jersey 07102 to the attention of Mr. Jay Church, Executive Director.


Anthony DeMarco, D.C.
President
State Board of Chiropractic
Examiners

DIRECTIVE REGARDING FUTURE ACTIVITIES OF
CHIROPRACTIC BOARD LICENSEE WHO HAS BEEN DISCIPLINED

A practitioner whose license is suspended or revoked or whose surrender of license with or without prejudice has been accepted by the Board shall conduct him/herself as follows.

- 1) Promptly deliver to the Board the original license and current biennial registration, ~~and, if authorized to prescribe drugs, the current State and Federal Controlled Dangerous Substances registrations.~~
- 2) Desist and refrain from the practice of the licensed profession in any form either as principal or employee of another.
- 3) Inform each patient at the time of any inquiry of the ~~suspended or~~ revoked or retired status of the licensee. When a new professional is selected by a patient, the disciplined practitioner shall promptly make available the original or a complete copy of the existing ~~medical~~ record to the new professional, or to the patient if no new professional is selected. Such delivery of record does not waive any right of the disciplined practitioner to claim compensation earned for prior services lawfully rendered.
- 4) Not occupy, share or use office space in which another licensee practices the profession.
- 5) Desist and refrain from furnishing professional services, giving an opinion as to the professional practice or its application, or any advice with relation thereto; and from holding him/herself out to the public as being entitled to practice the profession or in any way assuming to be a practicing professional or assuming, using or advertising in relation thereto in any other language or in such a manner as to convey to the public the impression that such person is a legal practitioner or authorized to practice the licensed profession. This prohibition includes refraining during the period of suspension or revocation from placement of any advertisement or professional listing in any advertising medium suggesting eligibility for practice or good standing, such as listing in a professional directory of any type or a telephone directory or radio or television advertisement.
- 6) Not use any sign or advertise that such person, either alone or with any other person has, owns, conducts or maintains a professional office or office of any kind for the practice of the profession or that such person is entitled to practice, and such person shall promptly remove any sign suggesting ability of the disciplined practitioner to practice the profession.
- 7) Cease to use any stationery whereon such person's name appears as a professional in practice. ~~If the practitioner was formerly authorized to issue written prescriptions for medication or treatment, such prescription pads shall be destroyed if the license was revoked. If the license was suspended, the prescriptions shall be destroyed or shall be~~
~~returned to the Board to prevent their use as whatever order~~
~~issuance of a Board Order authorizing use by the practitioner.~~
~~Medication dispensed for office use shall be lawfully~~
~~disposed of, transferred or safeguarded.~~

8) The disciplined licensee shall require that for a six-month period following the start of a suspension or revocation of license, a message be delivered to those telephoning the former office premises advising former patients where they may obtain their records. The message may inform callers that the practice is now being conducted by (another) named licensee, and the new telephone number of that licensee may be announced. The same information shall be disseminated by means of a notice to be published at least once per month for the same six month period in a newspaper of general circulation in the geographic vicinity in which the professional practice was conducted.

9) Not share in any fee for professional services performed by any other professional following the suspension, revocation or surrender of license, but the practitioner may be compensated for the reasonable value of the services lawfully rendered and disbursements incurred on the patient's behalf prior to the effective date of the suspension, revocation or surrender.

10) Use of the professional premises. The disciplined licensee may allow another licensee to use the office premises formerly occupied by the disciplined licensee on the following conditions only:

(a) The new licensee shall conduct the practice in every respect as his/her own practice including billings, claim forms, insurance provider numbers, telephone numbers, etc.

(b) The disciplined licensee may accept no portion of the fees for professional services rendered by the new licensee, whether by percentage of revenue, per capita patient, or by any other device or design, however denominated. The disciplined licensee may, however, contract for or accept payment from the new licensee for rent (not exceeding fair market value) of the premises and/or equipment.

(c) No use of name of disciplined licensee or personally owned office name or tax- or provider identification number.

1. Where the disciplined licensee was using an individual IRS number or where the licensee was the sole member of an incorporated professional association or a corporation, the disciplined licensee may contract to rent the office premises to a new practitioner. The new practitioner must use his/her own name and own provider number on all bills and insurance claim forms. Neither the name nor the number of the disciplined licensee may be used. When the license of a sole practitioner has been revoked, a trade name must be cancelled and a professional service corporation must be dissolved.

2. Where the disciplined licensee is a member of a professional group which uses a group-type name such as the ABC Medical Group. The disciplined licensee must arrange to have his/her name deleted, covered up or otherwise obliterated on all office signs, advertisements published by the group after the effective date of the Board disciplinary Order and on all printed billings and stationery. The other group members may continue to function under the incorporated or trade name, minus the name of the disciplined licensee, and may continue to use its corporate or professional identification number.

- 11) Report promptly to the Board compliance with each, directive requiring moneys to be reimbursed to patients or to other persons or third party payors or to any court, and regarding supervisory reports or other special conditions of the Order.
- 12) A practitioner whose license is surrendered, revoked or actively suspended for one year or more shall conduct him/herself as follows:
 - 1) Promptly require the publishers of any professional directory and any other professional list in which such licensee's name is known by the disciplined licensee to appear, to remove any listing indicating that the practitioner is a licensee of the New Jersey State Board of Chiropractic Examiners in good standing.
 - 2) Promptly require any and all telephone companies to remove the practitioner's listing in any telephone directory indicating that such practitioner is a practicing professional.
- 13) A practitioner whose practice privileges are affected by a Board disciplinary Order shall, within 30 days after the effective date of the Board Order, file with the Secretary of the Board a detailed affidavit specifying by correlatively lettered and numbered paragraphs how such person has fully complied with this directive. The affidavit shall also set forth the residence or other address and telephone number to which communications may be directed to such person. Any change in the residence address or telephone number shall be promptly reported to the Secretary.